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Attorneys for Defendant Google LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE LLC'S OPPOSITION TO
PLAINTIFFS' REQUEST FOR AN
ORDER FOR GOOGLE TO SHOW
CAUSE FOR WHY IT SHOULD NOT
BE SANCTIONED FOR DISCOVERY
MISCONDUCT**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Submission in Google’s Opposition to Plaintiffs’ Request for an Order for Google to Show Cause for Why It Should Not Be Sanctioned for Discovery Misconduct (“Opposition”), which consists of Ansorge Declaration and Exhibits 1-39 attached thereto, Liao Declaration, Leung Declaration, Golueke Declaration and Trebicka Declaration and Exhibits 1-51 attached thereto, and these documents contain non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including details related to Google’s data signals, logs, project names, internal identifiers, Google’s internal practices with regard to Incognito and its proprietary functionalities, as well as internal metrics and investigation into financial impact of certain features. This information is highly confidential and should be protected.

This Administrative Motion pertains for the following information contained in the Special Master Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Google’s Opposition for Sanctions	Portions Highlighted in Yellow at: Pages i:5-7, i:10, i:12, i:14, i:21, 1:10-11, 1:13, 1:15, 1:25-28, 2:1-3, 2:7, 2:10, 2:27, 3:21, 4:3-4, 4:6-7, 4:12, 4:15, 4:19-20, 5:1-5, 5:9-10, 5:13, 5:24-25, 6:7-8, 6:10-11, 6:13-15, 6:18-23, 7:1-3, 7:10, 7:18-19, 7:21-23, 8:6-10, 8:12-13, 9:1, 9:3-17, 10:1, 10:4, 10:7, 10:10, 10:16-28, 11:1, 11:3-8, 12:15, 12:19-20, 13:4-15, 13:17, 13:19, 13:22-26, 14:1, 14:6-7, 14:27-28, 15:9, 15:15, 15:18, 15:20, 15:22, 15:26-28, 16:2, 16:6, 16:9-10, 16:12, 16:15, 18:7, 18:11, 18:28, 19:1, 19:3-4, 19:6, 19:12, 19:24, 19:27, 21:12, 21:14-17, 21:19, 22:2, 24:9-10. 25:13.	Google
Ansorge Declaration	Portions Highlighted in Yellow at: Pages 2:20, 2:23, 3:3, 3:10, 4:2, 4:11, 4:14, 4:17, 5:17, 5:24, 5:25, 5:27-28 6:3-6, 6:8-12, 6:14-15, 7:1, 7:5-7, 7:13-14, 7:15, 7:21, 7:24-25, 7:28, 8:8, 8:13-14, 8:28, 9:14, 9:27, 10:6-7, 10:10-12, 10:18, 10:25, 10:27-28, 11:2-4,	Google

1		11:11, 11:19-20, 11:22-23, 12:11, 12:18-20, 13:10, 13:16-17, 13:22-23, 14:1,14:14-15, 14:17, 14:20, 14:27, 15:14, 15:25, 16:4, 16:14	
2			
3	Exhibit 3 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 66:5, 67:18	Google
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6	Exhibit 4 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 2	Google
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9	Exhibit 5 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 1-2	Google
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12	Exhibit 6 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 1-2	Google
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15	Exhibit 7 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 1	Google
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17	Exhibit 9 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 1	Google
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20	Exhibit 10 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 1-2	Google
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23	Exhibit 11 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 1-8	Google
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26	Exhibit 12 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 1	Google
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1	Exhibit 15 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 8-10	Google
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4	Exhibit 16 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 1	Google
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7	Exhibit 17 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 3-4	Google
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10	Exhibit 18 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 2, 6-7, 10-11	Google
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13	Exhibit 19 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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16	Exhibit 20 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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19	Exhibit 21 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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22	Exhibit 22 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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25	Exhibit 23 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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28	Exhibit 24 to Ansorge Declaration in support of Google's Opposition	Redacted in its entirety	Google

1	to Plaintiffs' Request for Sanctions		
2	Exhibit 25 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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5	Exhibit 26 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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8	Exhibit 27 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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11	Exhibit 28 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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14	Exhibit 29 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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17	Exhibit 30 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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20	Exhibit 31 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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23	Exhibit 32 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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26	Exhibit 33 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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1	Exhibit 34 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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4	Exhibit 35 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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7	Exhibit 36 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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10	Exhibit 37 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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13	Exhibit 38 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 8:12	Google
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16	Exhibit 39 to Ansorge Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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19	Liao Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages at caption page, lines 21 and 25, 1:4-5, 1:7-8, 1:12-15, 1:24, 1:25, 2:1-4, 2:9-11, 2:24, 2:25, 3:1-24, 3:25, 4:1-24, 4:25, 5:1, 5:25	Google
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21	Leung Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages at caption page, lines 20-21, 25, 1:5-6, 1:9-17, 1:20-22, 1:25, 2:10-12, 2:15-23, 2:25, 3:1-20, 3:25, 4:1-2, 4:5-6, 4:8-10, 4:25	Google
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23			
24	Golueke Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 1:22, 1:24, 2:12-13, 2:15-16, 2:20, 2:26-27, 3:1-2, 3:10, 3:25-26, 4:3-4, 4:6, 4:8, 4:13, 4:15-16	Google
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27	Exhibit 1 to Trebicka Declaration in support of Google's Opposition	Redacted in its entirety	Google
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1	to Plaintiffs' Request for Sanctions		
2	Exhibit 2 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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5	Exhibit 3 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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8	Exhibit 4 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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11	Exhibit 5 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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14	Exhibit 7 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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17	Exhibit 8 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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20	Exhibit 9 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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23	Exhibit 10 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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26	Exhibit 11 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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1	Exhibit 12 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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4	Exhibit 13 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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7	Exhibit 15 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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10	Exhibit 16 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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13	Exhibit 17 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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16	Exhibit 18 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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19	Exhibit 19 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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22	Exhibit 20 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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25	Exhibit 21 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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28	Exhibit 22 to Trebicka Declaration in support of Google's Opposition	Redacted in its entirety	Google

1	to Plaintiffs' Request for Sanctions		
2	Exhibit 23 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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5	Exhibit 24 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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8	Exhibit 25 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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11	Exhibit 26 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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14	Exhibit 27 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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17	Exhibit 28 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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20	Exhibit 29 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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23	Exhibit 30 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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26	Exhibit 31 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google
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1	Exhibit 33 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Page 2	Google
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4	Exhibit 34 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 2-7, 9-25	Google
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7	Exhibit 35 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 2, 4	Google
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10	Exhibit 36 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 2	Google
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13	Exhibit 39 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 102:12, 103:9, 261:10, 261:12, 261:17, 261:22, 262:1, 262:4-5, 262:7-8, 262:15-16, 262:20, 262:24	Google
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16	Exhibit 40 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 131:19, 131:25, 132:5, 132:10-11, 132:15, 132:22, 133:4, 133:9, 133:12, 133:15, 133:19	Google
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19	Exhibit 41 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 57:19	Google
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22	Exhibit 42 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 69:5-6, 69:8-10, 69:15-16, 69:25, 70:1, 70:3, 70:5-6, 70:18, 70:21, 70:23, 71:9, 72:20-22, 72:24-25, 73:5-6, 73:14-15, 73:17, 73:22, 75:17-20, 75:24-25, 76:1-2, 76:13-14, 76:24-25, 77:8, 77:20-23, 90:10-11, 91:2-4, 91:11-13, 91:17, 92:11	Google
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26	Exhibit 47 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 40:4, 40:23-24, 41:1, 41:3, 41:15, 47:23-24, 48:6, 48:8-9, 48:18	Google
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Exhibit 49 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Portions Highlighted in Yellow at: Pages 4:12, 4:15-16, 4:18. 4:21-22, 371:11, 371:15, 373:24, 374:1-2, 374:5-24	Google
Exhibit 50 to Trebicka Declaration in support of Google's Opposition to Plaintiffs' Request for Sanctions	Redacted in its entirety	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under

1 “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily
 2 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 3 meet the lower “good cause” standard.

4 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain “business
 6 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc'ns, Inc.*, 435
 7 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 8 “contain[] confidential information about the operation of [the party’s] products and that public
 9 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 10 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 11 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 12 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 13 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 14 standard where that information could be used to the company’s competitive disadvantage”) (citation
 15 omitted). Courts in this district have also determined that motions to seal may be granted as to
 16 potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 17 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 18 shown that the substance of the information . . . amounts to a trade secret”).

19 Here, the Opposition comprises confidential and proprietary information regarding highly
 20 sensitive features of Google’s internal systems and operations that Google does not share
 21 publicly. Specifically, this information provides details related to Google’s data signals, logs, project
 22 names, internal identifiers, Google’s internal practices with regard to Incognito and its proprietary
 23 functionalities, as well as internal metrics and investigation into financial impact of certain features.
 24 Such information reveals Google’s internal strategies, system designs, and business practices for
 25 operating and maintaining many of its important services while complying with its legal and privacy
 26 obligations.

27 Public disclosure of the above-listed information would harm Google’s competitive standing it
 28 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of

Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive business information related to Google’s processes and policies to ensure the integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is not publically available”).

Moreover, if publicly disclosed, malicious actors may use such information to seek to compromise Google’s data sources, including data logs, internal data structures, and internal identifier systems. Google would be placed at an increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted” because if made public, it “could lead to a breach in the security of the Gmail system”). The security threat is an additional reason for this Court to seal the identified information.

The information Google seeks to redact is the minimal amount of information needed to protect its internal systems and operations from being exposed to not only its competitors but also to nefarious actors who may improperly seek access to and disrupt these systems and operations. The “good cause” rather than the “compelling reasons” standard should apply but under either standard, Google’s sealing request is warranted.

IV. CONCLUSION

For the foregoing reasons, the Court should seal the identified portions of the Opposition.

DATED: April 8, 2022

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SULLIVAN, LLP

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